

REMARKS

Examiner's Rejections and Objections

The subject patent application is a continuation of U.S. Patent Application Serial No. 10/080,052 which was filed on February 21, 2002 and has presently received a Notice of Allowance from the U.S. Patent and Trademark Office. The purpose of this application is to seek broader claim coverage in accordance with the reasoning which was the basis for allowing the parent case.

During the prosecution of the parent case, two prior art references (Akimoto et al. reference & Japanese Patent Application No. 05/178,793) were cited and used to render rejections under 35 U.S.C. Sections 102(b) and 103(a) against the claims of the '052 patent application. However, those rejections were essentially overcome based upon Applicant's assertions that the two cited prior art references failed to adequately disclose a composition containing Asiasari Radix which is subjected to multiple pH adjustments with an acid and a base.

Indeed, the Examiner of the '052 patent application agreed with Applicant's differentiating arguments and allowed that case to overcome its cited prior art references. More specifically, the Examiner stated:

The claims are considered to be free of the prior art because the prior art does not use acids in the extraction process and does not adjust the pH. These additional extraction steps yield a different product, as discussed in applicant's response and in the declaration of Dr. Kim. (See, Office Action mailed September 22, 2003, page 4).

As will be demonstrated below, it is respectfully submitted that the presently pending claims, and more particularly independent Claims 1 and 12, have been amended to incorporate such features which were previously deemed to be allowable, and thus should share the same fate as the earlier-filed '052 patent application.

Summary of Applicant's Response

Independent Claims 1 and 12 were amended to incorporate allowable subject matters which are believed to overcome all of the prior art references cited in the earlier prosecution.

Amended Independent Claims 1 and 12

Applicant has amended independent Claims 1 and 12 to incorporate distinguishable features which are believed to be novel and unobvious over the cited prior art. Furthermore,

Applicant respectfully points out that amended independent Claims 1 and 12 are well within the previous Examiner's reasoning for overcoming the above-noted prior art references in the earlier-filed '052 patent application.

As noted above, the previous Examiner stated that the parent '052 patent application is "free of the prior art because the prior art does not use acids in the extraction process and does not adjust the pH. These additional extraction steps yield a different product," and thus provide novelty and unobviousness to Applicant's invention. Id. Applicant respectfully submits that amended independent Claims 1 and 12 expressly contain those features, and thus should be allowable.

Nonetheless, as will be demonstrated below, Applicant submits that amended base Claims 1 and 12 are distinguishable over the cited prior art as they clearly contain features that are novel and unobvious.

1. Applicant's Present Invention

Amended independent Claims 1 and 12 are directed toward a composition containing Asiasari Radix extracts which are subjected to multiple pH adjustments with an acid and a base for the purpose of improving memory and protecting brain cells in a normal healthy subject. As noted in the previously provided Declaration of Dr. Sung-Jin Kim, the inventor of the subject invention, the resulting extracts of the present invention are

significantly distinguishable from the ones disclosed in Akimoto or the '793 abstract. See, Declaration of Sung-Jin Kim, Ph.D.

In particular, the composition of the present invention is specifically manufactured to be utilized by normal subjects without any particular diseases or conditions for improving their memories and protecting their brain cells. In other words, the present composition is primarily intended for healthy individuals who wish to optimize their cognizant capabilities through daily intake of the composition. It should be well noted that such composition should be deemed as an enhancer, and not a remedy aimed at curing or alleviating any specified disease or condition of a human body such as hypertension or inflammation.

In order to derive the composition of the present invention, a naturally-occurring plant Asiasari Radix is used as an essential ingredient thereof. However, it should be recognized that this plant is specially prepared and integrated into the present composition. More specifically, among other preparatory procedures, the Asiasari Radix is subjected to multiple pH adjustments with an acid (to pH 2-4) and a base (to pH 9-12). By such specified process, an Asiasari Radix composition for memory improvement and brain cell protection can be satisfactorily created.

2. The Present Invention In View Of The Prior Art

Applicant submits that, as understood, Akimoto does not teach or suggest such composition containing Asiasari Radix which is subjected to multiple pH adjustments with an acid and a base for the purpose of improving memory and protecting brain cells in a normal healthy subject. Rather, Akimoto is understood to disclose a derivatized sesamin and/or episesamin compound which is specifically adapted at remedying "hypertension or medical symptoms caused thereby." (Column 2, lines 40-41). Simply put, Applicant submits that Akimoto's compound is essentially formed to be an answer to a specific condition of hypertension.

Furthermore, it is believed that Akimoto's compound does not use the above-noted procedures of the present invention for extracting its required sesamin and/or episesamin. As understood by Applicant, Akimoto utilizes "organic solvents that are essentially immiscible with sesame oil and are able to extract and dissolve the derivative of the present invention." (Column 4, lines 48-50). Specific examples of such organic solvents include "acetone, methyl ethyl ketone, diethyl ketone, methanol and ethanol." (Column 4, lines 51-52). Hence, it is respectfully submitted that the resulting product of Akimoto is sufficiently distinguishable from the extracts of the present invention. Id.

Likewise, the '793 abstract is not also understood to disclose a composition containing Asiasari Radix which is subjected to multiple pH adjustments with an acid and a base for the purpose of improving memory and protecting brain cells in a normal healthy subject. Instead, Applicant understands the '793 abstract to disclose a formula which is remedial in nature as it is specifically described as being "useful as anti-allergic or anti-inflammatory agents." (Page 1, paragraph 11). Based upon such description, Applicant respectfully submits that '793 abstract's formula is primarily a remedy for a specific bodily condition or disease of allergy or inflammation.

In addition, the formula of '793 abstract is not understood to utilize the above-noted procedures of the present invention during its production process. Rather, it is understood to resort to different procedures such as performing extraction "with water, MeOH, EtOH, acetone or EtOAc." (Page 1, paragraph 10). To reinforce such notion, Applicant points to '793 abstract's only described experiment which its formula was "extracted with 96L MeOH." (Page 1, paragraph 12). Thus, it is respectfully believed that the resulting product of the '793 application is patentably distinguishable from the extracts of the present invention. Id.

In summary, Applicant submits that the prior art fails to teach or suggest the specified composition of the present invention which contains Asiasari Radix that is subjected to multiple pH adjustments with an acid and a base and geared toward healthy individuals for memory improvement and brain cell protection. It would be unobvious to one of ordinary skill in the art to develop such an invention. Applicant believes that Akimoto is primarily used for remedying a specific disease or condition of hypertension, while '793 abstract is directed to remedying a different specific disease or condition of allergy or inflammation. Moreover, Applicant further submits that both of the prior art references fail to disclose the use of such specific procedures noted in the present invention during their respective extraction processes. Simply put, it would be unobvious to one of ordinary skill in the art to develop the above-illustrated composition of the present invention in view of the above two references with purposes that are not relatable to each other, or to the present invention for that matter.

Applicant respectfully submits that amended independent Claims 1 and 12 are novel and unobvious in view of the cited prior art, and thus allowable. Insofar as the amended independent Claim 1 and 12 are believed to be allowable, their respective dependent claims are also believed to be allowable.


Request for Allowance

On the basis of the foregoing, Applicant respectfully submits that all the stated grounds of objections and rejections have been overcome, and that Claims 1-15 are in condition for allowance. An early Notice of Allowance is therefore respectfully requested.

Should the Examiner have any suggestions for expediting allowance of the application, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

Respectfully submitted,

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